

3

Plaintiff

Case No. CV-2005-10-6065

vs

SUMMONS

WALTON, CHARLES F.
2020 FRONT ST., STE. 301
CUYAHOGA FALLS, OH 44221

OCT 20 2005

Defendant

DATE _____ SUMMONS ISSUED WITH... 2
COPIES OF comPL
BY CERT MAIL

To the following named defendants:

WALTON, CHARLES F.
2020 FRONT ST., STE. 301
CUYAHOGA FALLS, OH 44221

You have been named defendant(s) in a complaint filed in Summit County Court Of Common Pleas, Summit County Court House, Akron Ohio 44308, by :

HINES, SHANNON L.
3479 KENT RD.
STOW, OH 44224

Plaintiff(s). A copy of the complaint is attached hereto. The name and address of the plaintiff's attorney is:
RANDOLPH R. ROTH,
6393 OAK TREE BLVD., STE 110
INDEPENDENCE, OH 44131

You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he has no attorney of record, a copy of an answer to the complaint within twenty-eight days after service of this summons on you, exclusive of day of service. Your answer must be filed with the Court within three days after the service of a copy of the answer on the plaintiff's attorney, or upon the plaintiff, if he has no attorney of record.

If you fail to appear and defend, judgment by default may be rendered against you for the relief demanded in the complaint.

Certified Article Number

7160 3901 9849 1007 2580

SENDERS RECORD

Diana Zaleski
Clerk, Court Of Common Pleas
Summit County, Ohio

October 18, 2005

By: s/ M. Randles Deputy Clerk

Plaintiff

Case No. CV-2005-10-6065

vs

SUMMONS

WALTON, CHARLES F.
2020 FRONT ST., STE. 301
CUYAHOGA FALLS, OH 44221

Defendant

To the following named defendants:

SMITHERS-OASIS COMPANY
2020 FRONT ST., STE. 301
CUYAHOGA FALLS, OH 44221

You have been named defendant(s) in a complaint filed in Summit County Court Of Common Pleas, Summit County Court House, Akron Ohio 44308, by :

HINES, SHANNON L.
3479 KENT RD.
STOW, OH 44224

Plaintiff(s). A copy of the complaint is attached hereto. The name and address of the plaintiff's attorney is:
RANDOLPH R.. ROTH,
6393 OAK TREE BLVD., STE 110
INDEPENDENCE, OH 44131

You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he has no attorney of record, a copy of an answer to the complaint within twenty-eight days after service of this summons on you, exclusive of day of service. Your answer must be filed with the Court within three days after the service of a copy of the answer on the plaintiff's attorney, or upon the plaintiff, if he has no attorney of record.

If you fail to appear and defend, judgment by default may be rendered against you for the relief demanded in the complaint.

Certified Article Number

7160 3901 9849 1007 2573

SENDERS RECORD

October 18, 2005

Diana Zaleski
Clerk, Court Of Common Pleas
Summit County, Ohio

By: s/ M. Randles Deputy Clerk

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

2005 OCT 14 PM 2:02

2005-10-6065

SHANNON L. HINES
3479 KENT ROAD
STOW, OHIO 44224

CASE NO. _____

SUMMIT COUNTY
CLERK OF COURTS

JUDGE _____

~~ASSIGNED TO JUDGE SHAPIRO~~

Plaintiff,

v.

CHARLES F. WALTON
2020 FRONT STREET, SUITE 301
CUYAHOGA FALLS, OHIO 44221

VERIFIED COMPLAINT FOR
INJUNCTIVE RELIEF AND
MONEY DAMAGES
JURY DEMAND ENDORSED
HEREON

and

SMITHERS-OASIS COMPANY
2020 FRONT STREET, SUITE 301
CUYAHOGA FALLS, OHIO 44221

Defendants.

COUNT I

1. Plaintiff is an artist in Summit County, Ohio.
2. Defendant Charles F. Walton is currently and was formerly the President and Chairman of the Board of Defendant Smithers-Oasis Company.
3. Plaintiff alleges that Defendant Charles F. Walton while the President and Chairman of the Board of Defendant Smithers-Oasis Company, induced Plaintiff through fraud and misrepresentation to enter into the written agreement attached hereto as Exhibit A in that Defendant Charles F. Walton represented to Plaintiff that if the animal shapes that Plaintiff was to create were to make it to market, Plaintiff would be hired on full time in Defendant Smithers-Oasis Company's product development department as a designer.
4. When the animal shapes product was prepared to go to

mass production, Defendant Charles F. Walton told Plaintiff that she was no longer needed because the design phase of the product was complete.

5. Plaintiff has been damaged due to the foregoing in that she was not hired full time as a designer at Defendant Smithers-Oasis Company and Defendant Smithers-Oasis Company is marketing the animal shapes product she created without compensating her as promised.

COUNT II

6. Plaintiff realleges and incorporates by reference paragraphs one through five as though fully rewritten herein.

7. On or about July 25, 2001, Plaintiff and Defendant Smithers-Asais Company entered into a written contract, a copy of which is attached hereto as Exhibit A.

8. Said written contract terminated when Plaintiff was terminated by Defendant Charles F. Walton.

9. Defendant Smithers-Oasis Company has breached this written contract by marketing minature animal shape sculptures created by Plaintiff after she was terminated.

10. Plaintiff has been damaged due to Defendant Smithers-Oasis Company's marketing said products based on Plaintiff's invention and design without the right to do so and without compensating Plaintiff.

COUNT III

11. Plaintiff realleges and incorporates by reference paragraphs one through ten as though fully rewritten herein.

12. Said contract attached as exhibit A in unconscionable and void or voidable.

COUNT IV

13. Plaintiff realleges and incorporates by reference paragraphs one through thirteen as though fully rewritten herein.

14. At all times, Plaintiff was, and still is, the owner and entitled to immediate possession of the design and products being marketed by Defendant Smithers-Oasis Company as Gardenshapes.

15. Defendant Smithers-Oasis Company wrongfully took the design and products created from the design and wrongfully detained it and sold it.

16. On September 16, 2005, Plaintiff demanded that Defendant Smithers-Oasis Company cease and desist in marketing and selling anything based on the artistic creation by Plaintiff and to turn over all monies recived from the marketing of same, but the defendant failed and refused to return it.

17. Plaintiff has been damaged in not having exclusive use of her creation and monetarily for the revenues defendant received from the marketing of said products.

COUNT V

18. Plaintiff realleges and incorporates by reference paragraphs one through seventeen as though fully rewritten herein.

19. Since being terminated from Defendant Smithers-Oasis Company, and prior thereto, Defendants have planned and implemented a plan to harm Plaintiff by marketing products created by Plaintiff and owned by Plaintiff. In implementing its plan, Defendants have sold and are continuing to sell said products all over the United States and Canada.

20. The foregoing conduct has been in violation of Plaintiff's rights, to her detriment and damage, and in violation of RC 1333.51

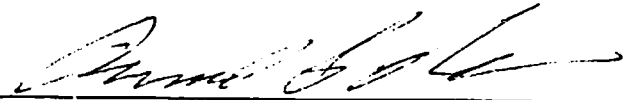
and RC 1333.61 to RC 1333.69.

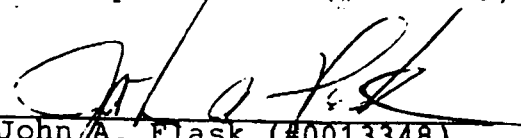
21. Defendants have engaged in the foregoing conduct willfully and maliciously.

22. The damage that Defendants have inflicted on Plaintiff is irreparable and is continuing, and Plaintiff has no adequate remedy at law.

Wherefore, Plaintiff demands judgment against Defendants, jointly and severally, for the following relief:

1. For an amount in excess of \$25,000.00;
2. For an amount in excess of \$25,000.00 in punitive damages;
3. For an injunction enjoining and restraining Defendants and those acting in concert or participation with them from directly or indirectly making use of or transmitting to any party or entity the Gardenshapes and the design of the Gardenshapes;
4. For an injunction ordering and enjoining Defendants and those acting in concert or participation with them to return immediately to Plaintiff all records of sales and transfers of the Gardenshapes and the design of the Gardenshapes including that which they have or may receive in the future; and
5. For interest, costs, and that said contract attached as Exhibit A be declared void, voidable or unenforceable.


Randolph R. Roth (#0062675)


John A. Flask (#0013348)
6393 Oak Tree Blvd., Suite 110
Independence, Ohio 44131
(216) 642-8722
Fax: (216) 901-4826
Attorneys for Plaintiff

COPYRIGHT WORK FOR HIRE AGREEMENT/ASSIGNMENT

This Agreement is made this 25 day of July, 2001 by and between Smithers-Oasis Company (Smithers), an Ohio corporation, with a principal place of business located at 2020 Front Street, Suite 301, Cuyahoga Falls, Ohio 44221, and Shannon L. Hines (Hines), an individual with a residence of 3652 Kent Rd., Apt. A-2, Stow, Ohio 44224.

WHEREAS Hines has made and will continue to make sculptures to be used as the basis for topiary forms, and other projects as directed specifically by Smithers, which projects shall hereinafter be referred to as WORKS, upon Smithers' special request, order and commission for use as a contribution to:

1. a collective work (A work such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, each constituting separate and independent works in themselves, are assembled into a collective whole);
2. as part of a motion picture or other audio-visual work;
3. as a translation;
4. as a supplementary work (A work prepared for a publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forwords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes and indexes);
5. as a compilation (A compilation may be either (1) a collective work (see a. above) or (2) other compilations which are works consisting of the collection and assembling of preexisting materials or data other than separate and independent works);
6. as an instructional text (A literary, pictorial or graphic work prepared for publication and with the purpose of use in systematic instructional activities);
7. as a test;
8. as answer material for a test; or
9. as an atlas; and

WHEREAS Hines and Smithers agree that the said WORKS, shall be considered as a work made for hire; or in the event that said WORKS can not be classified as such, Hines agrees that she will assign the ownership of said WORKS to Smithers;

NOW, THEREFORE, in consideration of the sum of Fifteen Dollars (\$15.00) per hour, and for the payment of Hines out of pocket expenses related to the WORKS as reflected on an expense report to be presented to Smithers, Hines hereby acknowledges and agrees that the said WORKS shall be considered as a work made for hire, or shall be assigned to Smithers, and that all rights connected with the said WORKS are entirely the property of Smithers, its successors and assigns, absolutely and forever, including copyright rights, for any and all copyright terms and all extensions and renewal terms thereof whether now known or hereafter created, and free from the payment of any royalty or other compensation whatsoever.

IN WITNESS WHEREOF, the parties have set their hands.

SMITHERS-OASIS COMPANY

Shannon L. Hines
Shannon L. Hines

By: Charles F. Walton
Charles F. Walton
President

STATE OF Ohio)
COUNTY OF Summit) ss.

Before me, a Notary Public for the State of Ohio, appeared the above named Shannon Hines and Charles Walton who acknowledged that they signed the foregoing instrument and that their signing was their free act.

IN TESTIMONY WHEREOF, I have hereto subscribed my name and affixed my seal this 25 day of July, 2001.

Margaret Michel
Notary Public, State of
My Commission Expires 9-8-, 2001
Recorded in Stark County



MARGARET MICHEL, Notary Public
Resident - Stark County
Statewide Election - Ohio
My Commission Expires Sept. 8, 2003


VERIFICATION

State of Ohio)
County of Cuyahoga) ss:

Shannon L. Hines, being first duly sworn according to law, deposes and says that she has read the foregoing Verified Complaint for Injunctive Relief and for Money Damages, and that the statements contained therein are true and correct, to the best of her knowledge, information, and belief. So far as upon information and belief, she further states that she believes the information to be true.


Shannon L. Hines

Sworn to before me and subscribed in my presence this 30th day
of September, 2005.


Notary Public

JOHN A. FLASK, Attorney at Law
Notary Public, State of Ohio
My commission has no expiration date
Sec. 147.03 R.C.

2005 OCT 24 PM 12:47
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

SHANNON L. HINES, et al.)	CASE NO. 2005-10-6065
)	
Plaintiff,)	JUDGE SHAPIRO
)	
v.)	
)	
CHARLES F. WALTON, et al.)	<u>MOTION FOR TEMPORARY</u>
)	<u>RESTRAINING ORDER</u>
)	
Defendants.)	

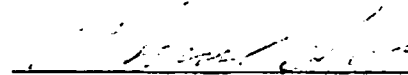
Plaintiff moves pursuant to Rule 65(A) of the Ohio Rules of Civil Procedure, for a temporary order restraining order restraining defendant Smithers-Oasis Company, its agents, servants, employees and all persons in active concert and participation with it, from selling, transferring, permitting to be sold or transferred, disposing of, or otherwise taking any action which would affect, impair or reduce plaintiff's ownership which it now holds of a certain minature animal shape sculptures, more fully described in the verified complaint for injunctive relief and money damages, pending hearing and determination of plaintiff's complaint for injunctive relief on the ground that immediate and irreparable injury, loss, and damage will result to plaintiff before notice can be given and the defendant Smithers-Oasis Company or its attorney can be heard in opposition, as more fully appears from the verified complaint and from the affidavit of Shannon L. Hines and the certificate of the undersigned showing that all reasonable effort has been made to notify the defendant Smithers-Oasis Company's attorney by telephone and facsimile of this motion.

A Memorandum in Support for this motion follows.

MEMORANDUM IN SUPPORT

Plaintiff's motion for a temporary restraining order asks this Honorable Court to restrain defendant Smithers-Oasis Company, its agents, servants, employees and all persons in active concert and participation with it, from selling, transferring, permitting to be sold or transferred, disposing of, or otherwise taking any action which would affect, impair or reduce the proceeds which it now holds of a certain miniature animal shape sculptures, described above, pending hearing and determination of plaintiff's motion for injunctive relief. Under the facts set forth in the verified Complaint for Injunctive Relief and Money Damages, any disposition by defendant Smithers-Oasis Company, of the aforesaid miniature animal shape sculptures, described by defendant Smithers-Oasis Company as Gardenshapes will cause immediate and irreparable injury to plaintiff if not immediately restrained.

Plaintiff has a civil action pending against defendants for among other things, the recovery of funds improperly paid to defendants based on their marketing of Gardenshapes. Plaintiff believes that Gardenshapes were based on her invention, and that if defendant Smithers-Oasis Company is not restrained from selling, transferring, or otherwise disposing of said Gardenshapes, said Gardeshapes will be sold, transferred, or otherwise disposed of, which action will severely and irreparably impair plaintiff's ability to recover the animal shape sculptues and monies owed to her by defendants.


Randolph R. Roth (#0062675)
6393 Oak Tree Blvd., Suite 110
Independence, Ohio 44131
Phone: (216)642-8722

One of Plaintiff's Attorneys

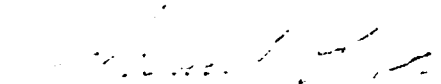
CERTIFICATION

I, Randolph R. Roth, one of the attorneys for plaintiff in the above-entitled action, hereby certify that:

1. On October 24, 2005, at approximately 11:00 a.m., the undersigned telephoned Sylvia A. Petrosky, the attorney for defendant Smithers-Oasis Company herein.

2. During the aforesaid telephone conversation, the undersigned informed her that Shannon L. Hines, the plaintiff herein, would seek a temporary restraining order on October 24, 2005, on or about 1:00 p.m., in the Summit County Court of Common Pleas to restrain the Defendant Smithers-Oasis Company from marketing the miniature animal scape sculptures created by Shannon L. Hines after she was terminated by Defendant Smithers-Oasis Company.

3. The undersigned further sent a facsimile of this certification, confirming the above telephone conversation.



Randolph R. Roth (#0062675)
6393 Oak Tree Blvd., Suite 110
Independence, Ohio 44131
(216) 642-8722
Facsimile: (216) 901-4826

One of Attorneys for Plaintiff

State of Ohio)
) ss:
County of Summit)

1. I am the plaintiff herein, an artist who worked at Smithers-Oasis Company, located in Summit County, Ohio.

3. I created miniature animal shape sculptures currently being marketed by defendant Smithers-Oasis Company as Gardenshapes to retailers and businessess all over the United States and Canada.

5. I have observed that these miniature animal shape sculptures being marketed on defendant Smithers-Oasis Company's website.

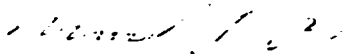
Shannon L. Hines
Shannon L. Hines

James A. [Signature]
Notary Public

W. RICHARD ROY, JR.
NOTARY PUBLIC • STATE OF TEXAS
My Commission Has No Expiration Date
Section 147.02 O.R.C.

SERVICE

A copy of the foregoing Motion for Temporary Restraining Order, Memorandum in Support, Certification and Affidavit in Support of Motion for Temporary Restraining Order has been served upon Sylvia A. Petrosky, Esq., by facsimile at (330) 867-5290 and upon Defendants Charles F. Walton and Smithers-Oasis Company, 2020 Front Street, Suite 301, Cuyahoga Falls, Ohio 44221, by regular mail, postage prepaid, this 24th day of October, 2005.



Randolph R. Roth

One of Plaintiff's Attorneys

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

SHANNON L. HINES, et al.)	CASE NO. 2005-10-6065
)	
Plaintiff,)	
)	
v.)	<u>ORDER</u>
)	
CHARLES F. WALTON, et al.)	
)	
Defendants.)	

This cause came on to be heard on plaintiff's motion for temporary restraining order, the affidavit submitted and the certificate of Randolph R. Roth, one of the attorneys for plaintiff and it appearing to the court that defendant Smithers-Oasis Company is committing acts and are about to commit acts as set forth in plaintiff's verified complaint and motion, and will continue to do so unless restrained by order of this court, and that immediate and irreparable injury, loss, or damage will result to plaintiff before notice can be given and it or its attorney can be heard in opposition, in that it will continue to market the minature animal shape sculptures alleged created and owned by plaintiff, it is

Ordered, that Defendant Smithers-Oasis Company, its agents, servants, employees, and all persons in active concert and participation with them, be and they hereby are restrained from in any manner, either directly or indirectly interfering with plaintiff's alleged ownership and creation by selling, transferring, permitting to be sold or transferred, disposing of, or otherwise taking any action which would affect, impair or reduce plaintiff's alleged ownership of certain minature animal shape sculptures,

described by Defendant Smithers-Oasis as Gardenshapes; and it is further

Ordered, that this order expire within _____ days after entry unless within such time the order for good cause shown is extended, or unless the defendant Smithers Oasis Company consents that it may be extended for a longer period, and it is further

Ordered, that plaintiff's verified complaint for preliminary injunction be assigned for hearing on _____ at _____ ; and it is further

Ordered, that copies of this order be immediately served by _____ upon the defendants.

Issued at _____, _____.

Judge

2005 OCT 25 PM 2:57
SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMMIT

SHANNON L. HINES

Plaintiff

-vs-

CHARLES F. WALTON, et al.

Defendants

) CASE NO. CV-2005-10-6065

) JUDGE SHAPIRO

) ORDER

- - -

A hearing is scheduled in this matter on November 8, 2005 at 3:30 p.m.

It is so ordered.


JUDGE MARVIN A. SHAPIRO

CC: ATTORNEY RANDOLPH R. ROTH
ATTORNEY RAY L. WEBER
ATTORNEY SYLVIA ANN PETROSKY

CTM
05-6065